

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2017

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information from the Home Office relating to a complaint which had concluded with a decision notice issued by the Information Commissioner.
2. The Home Office refused to provide the requested information citing section 14(1) of the FOIA (vexatious requests).
3. The Commissioner's decision is that the Home Office correctly applied section 14(1) to the request. The Commissioner requires no steps to be taken.

Background

4. The request in this case relates to a complaint about the Home Office's handling of a request for information made by a third party who was not the complainant. The Information Commissioner investigated that complaint and issued a decision notice¹ dated 16 March 2016.
5. The decision notice required the Home Office to issue a fresh response to the third party, compliant with the FOIA.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1623758/fs50611991.pdf>

Request and response

6. On 29 March 2016 the complainant made the following request for information under the FOIA via the WhatDoTheyKnow website²:

"Please provide an electronic copy of all recorded information you hold regarding ICO case reference FS50611991, which concluded with a published decision notice critical of your FOI handling. The information you disclose will doubtless include your correspondence with the ICO".

7. The Home Office responded on 26 April 2016. It refused to provide the requested information citing section 14(1) of the FOIA – vexatious requests.
8. The Home Office provided an internal review on 1 September 2016 in which it maintained that position.

Scope of the case

9. The complainant contacted the Commissioner on 1 September 2016 to complain about the way his request for information had been handled.
10. He disputed the Home Office's application of section 14.
11. The analysis below considers the Home Office's application of section 14 of the FOIA to the requested information.
12. The complainant also complained about the length of time the Home Office took to conduct its internal review. The Commissioner has commented on that delay in 'Other matters' below.

Reasons for decision

Section 14 vexatious requests

² <https://www.whatdotheyknow.com/request/fs50611991?nocache=incoming-861656#incoming-861656>

13. Section 14(1) of the FOIA provides that a public authority is not obliged to comply with a request that is vexatious.
14. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*³. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
15. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
 - the burden imposed by the request (on the public and its staff);
 - the motive of the requester;
 - the value or serious purpose of the request; and
 - any harassment or distress of and to staff.
16. Consistent with that Upper Tribunal decision, which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance on section 14(1)⁴ states:

"Section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress".
17. Her guidance recognises that sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious, but that in cases where the issue is not clear-cut the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

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<http://administrativeappeals.decisions.tribunals.gov.uk/judgmentfiles/j3680/%5B2015%5D%20AACR%2034ws.rtf>

⁴ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

18. This will usually mean weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request.

The complainant's view

19. The complainant told the Home Office:

"The request plainly has a serious purpose and value, namely transparency surrounding a finding by an independent regulator that the Home Office, an important government department responsible for law and order, had failed to comply with statutory obligations".

20. In support of his view that he should be provided with the requested information, the complainant told the Commissioner:

"The decision notice is very critical of the Home Office so there is a serious value in transparent openness about this".

The Home Office's view

21. The Home Office told the complainant:

"We consider that your request lacks serious purpose and value and would cause a disproportionate level of disruption [if it were to be met]".

22. It confirmed that it had objectively judged the evidence of the impact on the department and weighed this against any evidence of the purpose and value of the request.

23. Explaining its decision to uphold its application of section 14(1), the Home Office told the complainant:

"... the ICO decision notice (ref FS50611991) contains all relevant information about the handling of the request and it can be accessed on the ICO website. To provide "all recorded information" about this particular case in response to your request would give little or no additional information to what is already publically available. It would therefore not be reasonable to use staff resources in this way and to take their time away from complying with legitimate requests".

24. In its submission to the Commissioner, the Home Office told confirmed that, in applying section 14(1) in this case, it had followed the two judgments in *Dransfield (Information Commissioner v Devon County Council and Dransfield* [2012] UKUT 440 (AAC), 28 January 2013 and *Dransfield v Information Commissioner and Devon County Council*

[2015] EWCA Civ 454, 14 May 2015) and the Commissioner's guidance on dealing with vexatious requests.

25. It explained that it was applying section 14(1) in this case on the basis that responding to the request would be a disproportionate use of the FOIA.
26. It confirmed that it had considered the extent to which responding to the request would be burdensome and explained what it considered the main burden would be. It told the Commissioner:

"We would nevertheless argue that the burden would be disproportionate compared with the value of the information and that it would be a squandering of Home Office resources".

27. The Home Office told the Commissioner it recognised that while, as a general rule, disclosure of information about the handling of the case will not add a great deal that is of interest to the general public, there may be exceptions. However, it argued that this was not the case here, explaining that there were no novel or substantive issues at stake in the way in which the request was handled internally.

28. In that respect it told the Commissioner:

"The published decision notice describes the position fully and the disclosure of the requested information would add little, particularly given that neither the fact of the error nor the decision was contested".

29. The Home Office also told the Commissioner:

"We do not claim that the request has caused any harassment or distress to staff".

The Commissioner's view

30. The issue for the Commissioner to determine in this case is whether the request of 29 March 2016 was vexatious. Section 14(1) can only be applied to the request itself and not the individual who submitted it.
31. In reaching a decision in this case, the Commissioner has considered the arguments put forward both by the complainant and the Home Office.
32. She determined that the key question to be considered when weighing up whether this request was vexatious was whether the request was likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
33. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right

of access to official information with the intention of making public bodies more transparent and accountable.

34. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
35. The Commissioner acknowledges that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
36. The Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
37. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)*.
38. In weighing the evidence about the impact of the request of 29 March 2016 on the Home Office and balancing this against the purpose and value of the request, the Commissioner has taken into account that the complainant considered that the request had a serious purpose and value.
39. Regarding whether the purpose and value of a request justifies the impact on the public authority, the Commissioner's guidance states:

"The key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority".
40. Applying this to the request in question, the Commissioner has decided that the Home Office was correct to find the request vexatious. She has balanced the purpose and value of the request against the detrimental effect on the public authority and is satisfied that the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
41. Accordingly the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Other matters

42. Regarding the length of time between requesting an internal review of its handling of his request for information and receiving a response, the complainant told the Commissioner:

"I asked for the internal review in April. I only just got it today in September. That is not OK".

43. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
44. In this case, the internal review that the complainant requested on 26 April 2016 was not completed in accordance with that guidance.
45. The Commissioner expects the Home Office to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

Right of appeal

46. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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